

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BERN IMMEDIATE

USMISSION EC BRUSSELS

AMEMBASSY OTTAWA

AMEMBASSY TOKYO

LIMITED OFFICIAL USE STATE 266158

FOLLOWING REPEAT STATE 266158 ACTION BRASILIA INFO GENEVA
11 NOVEMBER 75.

QUOTE

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E.O. 11652: N/A

TAGS: GATT, ETRD, BR

SUBJECT: DEMARCHE ON BRAZILIAN APPLICATION FOR GATT WAIVER

1. HEREWPTH FOLLOWS BACKGROUND MATERIAL AND AN AIDE-MEM-
OIRE FOR SUBJECT DEMARCHE:

BACKGROUND

2. IN 1967, BRAZIL APPLIED FOR AND WAS GRANTED A WAIVER
UNDER ARTICLE XXV OF THE GATT TO RENEGOTIATE THE SCHEDULE OF
CONCESSIONS WHICH IT HAD AGREED TO AS A CONDITION OF ITS
ACCESSION TO THE GATT. BRAZIL REQUESTED THE WAIVER TO
FACILITATE THE CONVERSION OF ITS TARIFF SYSTEM TO A SYSTEM
USING THE BRUSSELS TARIFF NOMENCLATURE. BECAUSE BRAZIL'S
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ECONOMIC SITUATION AT THE TIME WAS A VERY DIFFICULT ONE,
THE CONTRACTING PARTIES AGREED TO ALLOW BRAZIL TO MAKE
REFERENCE IN THE WAIVER TO GATT ARTICLE XXXVI:8, WHICH
PROVIDES THAT DEVELOPED COUNTRY CONTRACTING PARTIES WILL

NOT REQUIRE FULL RECIPROCITY OF LESS DEVELOPED COUNTRY
CONTRACTING PARTIES IN TRADE NEGOTIATIONS.

3. THE ORIGINAL WAIVER, WHICH CALLED ON THE GOB TO ENTER
INTO THE REQUISITE NEGOTIATIONS AND CONSULTATIONS AS
PROMPTLY AS POSSIBLE, WAS VALID UNTIL FEBRUARY 29, 1968,

BUT WAS RENEWED BY EIGHT SUBSEQUENT DECISIONS OF THE CON-
TRACTING PARTIES UNTIL IT FINALLY EXPIRED ON APRIL 30,
1974. HOWEVER, THE NEGOTIATIONS WITH THE USG UNDER THIS
WAIVER WERE ONLY CONCLUDED IN 1970 AND FINAL AGREEMENTS
WITH OTHER AFFECTED CONTRACTING PARTIES WERE NOT REACHED
UNTIL 1974. ON MAY 27 OF THIS YEAR, JUST A FEW DAYS BE-
FORE THE RENEGOTIATED SCHEDULE WAS TO BE PROMULGATED,
BRAZIL ANNOUNCED IN DECREE NO. 75.772 THAT IT WAS WITH-
DRAWING CERTAIN OF THE CONCESSIONS GRANTED IN THE RENEGO-
TIATIONS.

4. AT THE JULY MEETING OF THE GATT COUNCIL, BRAZIL AGREED
TO APPLY FOR ARTICLE XXV WAIVER FROM THE CONTRACTING PAR-
TIES TO RENEGOTIATE UNDER THE PROVISIONS OF ARTICLE XXVIII
THE CONCESSIONS WHICH HAD BEEN IMPAIRED BY DECREE 75.772.
HOWEVER, THE BRAZILIANS DRAFTED THE WAIVER WITH A REFER-
ENCE TO ARTICLE XXXVI:8, A MOVE THE USG CONSIDERS NOT TO
BE IN THE BEST INTERESTS OF EITHER BRAZIL OR THE GATT, AND
THE US DELEGATION TO THE GATT HAS MADE A MAJOR EFFORT TO
CONVINCE THE BRAZILIANS TO DELETE THAT REFERENCE FROM
THE WAIVER. DEPARTMENT OFFICIALS ALSO DISCUSSED THE
MATTER WITH BRAZILIAN EMBASSY COUNSELOR THOMPSON FLORES
WHEN HE DELIVERED AN AIDE MEMOIRE ON THE SUBJECT ON OCT.

23. AS NEITHER OF THOSE EFFORTS WAS SUCCESSFUL IN
CHANGING THE BRAZILIANS' POSITION, EMBASSY BRASILPA IS
REQUESTED TO MAKE A DEMARCH DIRECTLY TO THE BRAZILIAN
GOVERNMENT ON THE SUBJECT.

5. THE U.S. GOVERNMENT IS VERY CONCERNED ABOUT THE POSSI-
BILITY THAT BRAZIL'S ACTION WITH RESPECT TO THIS WAIVER
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WILL SET A PRECEDENT FOR LDC'S BEING ENTITLED TO MULTIPLE
RENEGOTIATIONS OF A PARTICULAR SET OF CONCESSIONS, EACH
TIME WITH LESS THAN FULL RECIPROCITY. FOLLOWED TO ITS
LOGICAL CONCLUSION, SUCH A PRACTICE WOULD RESULT IN THE
GRADUAL BUT COMPLETE ELIMINATION OF THOSE CONCESSIONS WHICH
THE LDC GRANTED ITS DC TRADING PARTNER IN THE INITIAL
NEGOTIATION. EVEN IF NOT PURSUED TO SUCH A CONCLUSION,
THIS PRACTICE WOULD MAKE IT IMPOSSIBLE FOR DC'S TO
ACCURATELY ASSESS THE VALUE OF CONCESSIONS OFFERED BY
LDC'S IN TRADE NEGOTIATIONS BECAUSE OF THE POSSIBLE
DIMINUATION OF THEIR INITIAL VALUE BY SUBSEQUENT RENEGO-
TIATIONS. IF SUCH A SITUATION WERE TO DEVELOP, DC'S WOULD

BECOME INCREASINGLY RELUCTANT TO NEGOTIATE WITH LDC'S AND THE GATT, AND INDEED THE WORLD TRADING SYSTEM COULD BE SERIOUSLY THREATENED.

6. IT IS OF COURSE IMPOSSIBLE TO SAY WITH CERTAINTY THAT THE ABOVE DESCRIBED SITUATION WOULD IN FACT DEVELOP, BUT WE FEEL THAT THE POTENTIAL LONG-RUN COSTS FOR BRAZIL ARE

SO MUCH HIGHER THAN THE SHORT RUN GAINS THAT BRAZIL SHOULD SEE IT IN ITS OWN INTEREST TO DELETE THE REFERENCE TO ARTICLE XXXVI:8 FROM THE WAIVER. THE GOVERNMENT OF BRAZIL IS WELL AWARE THAT NONE OF THE DC'S REQUIRES CONCESSIONS OF LDC'S WHICH ARE INCONSISTENT WITH THE LDC'S LEGITIMATE DEVELOPMENT, FINANCIAL, AND TRADE NEEDS, WHICH IS ALL THAT ARTICLE XXXVI:8 REQUIRES. WE FEEL THEREFORE THAT BRAZIL SHOULD RECONSIDER ITS POSITION IN THIS MATTER.

7. BRAZIL HAS TAKEN THE POSITION THAT UNDER THE TERMS OF PART IV OF THE GATT IT HAS EVERY RIGHT TO RENEGOTIATE THE IMPAIRED CONCESSIONS GIVING LESS THAN FULL RECIPROCITY TO ITS DC TRADING PARTNERS. AS A FACE-SAVING OUT FOR THE U.S., BRAZIL HAS SUGGESTED THAT THESE RENEGOTIATIONS BE CONSIDERED AN EXTENSION OF THE RENEGOTIATIONS CONDUCTED UNDER THE 1967 WAIVER AND NOT, THEREFORE, TO SET A PRECEDENT FOR MULTIPLE RENEGOTIATIONS WITH REPEATED REFERENCE TO ARTICLE XXXVI:8, VIZ. THIS IS ACTUALLY JUST ONE PROTRACTED RENEGOTIATION WITH ONLY A SINGLE REFERENCE TO ARTICLE XXXVI:8. THEY BASE THIS POSITION ON THE FACT THAT THE MODIFICATIONS IN THE RENEGOTIATED SCHEDULE WHICH RESULTED LIMITED OFFICIAL USE
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IN THE IMPAIRMENTS IN QUESTION WERE ANNOUNCED BEFORE THE SCHEDULE WAS PROMULGATED AND THEY CLAIM THE RENEGOTIATIONS CAN, THEREFORE, BE CONSIDERED NOT TO HAVE BEEN COMPLETED.

8. THE U.S. CANNOT ACCEPT SUCH INTERPRETATION OF THE SITUATION BECAUSE WE DO NOT BELIEVE IT IS SUPPORTED BY THE FACTS AND WE DO NOT FEEL THAT IT WOULD HOLD UP IF CHALLENGED BY ANOTHER CONTRACTING PARTY AT SOME FUTURE DATE. THE AGREEMENTS NEGOTIATED UNDER THE 1967 WAIVER HAVE ALL BEEN CONCLUDED AND THE WAIVER ITSELF HAS EXPIRED. FURTHER THE TERMS OF THE 1967 WAIVER NO LONGER APPLY TO BRAZIL, E.G., BRAZIL IS NOT SEEKING A WAIVER TO ENABLE IT TO CONVERT TO A NEW TARIFF SYSTEM BUT RATHER TO ALLOW IT TO TAKE WHAT APPEAR TO BE PROTECTIONIST MEASURES, AND ALSO THE EXTRAORDINARY ECONOMIC CONDITIONS CITED IN THE 1967 WAIVER ARE NO LONGER CHARACTERISTIC OF BRAZIL. BRAZIL IS IN OUR OPINION SEEKING A NEW WAIVER UNDER NEW CIRCUMSTANCES FOR DIFFERENT REASONS THAN THOSE MOTIVATING THE 1967 WAIVER. IN ANY CASE, WE ARE CONCERNED THAT A PRECEDENT WILL BE SET BY THIS DECISION,

WHETHER BRAZIL AND/OR THE U.S. DESIRE IT OR NOT.

9. THE U.S. STAND ON THIS ISSUE IS NOT PRIMARILY OUT OF ITS CONCERN FOR THE ECONOMIC COSTS RELATED TO RENEGOTIATING AT LESS THAN FULL RECIPROCITY THE SMALL PACKAGE OF CONCESSIONS WHICH THE BRAZILIANS HAVE IMPAIRED. NOR IS IT A MANIFESTATION OF USG DISPLEASURE AT THE POSITIONS TAKEN BY BRAZIL ON TWO ISSUES DECIDED RECENTLY IN THE UN

IN WHICH BRAZIL OPPOSED THE U.S. OUR CONCERN IS SIMPLY THAT A COUNTRY LESS RESPONSIBLE IN THE CONDUCT OF ITS INTERNATIONAL TRADE POLICY THAN BRAZIL MIGHT MAKE USE OF THIS PRECEDENT IN A WAY WHICH WOULD BADLY WEAKEN THE GATT TO THE DETRIMENT OF DC'S AND LDC'S ALIKE. WE THINK IT ESPECIALLY IRONIC THAT BRAZIL, WHICH WILL JOIN THE RANKS OF THE DEVELOPED COUNTRIES IN A VERY FEW YEARS, WOULD RISK, FOR THE ENJOYMENT OF A VERY MINOR TRADE ADVANTAGE NOW, THE VIABILITY OF THE WORLD TRADING SYSTEM WHICH PROMISES BRAZIL SO MUCH FUTURE BENEFIT.

10. ACTION REQUESTED: AMEMBASSY BRASILIA IS REQUESTED
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TO DELIVER THE AIDE-MEMOIRE CONTAINED IN PARAGRAPHS 11-16 TO OFFICIALS AT THE HIGHEST APPROPRIATE LEVEL IN THE BRAZILIAN GOVERNMENT AND TO COMMUNICATE AS FORCEFULLY AS POSSIBLE USG CONCERN WITH THE INCLUSION OF THE REFERENCE TO ARTICLE XXXVI:8 IN THE WAIVER. DRAWING ON THE PRECEDING MATERIAL, THE EMBASSY SHOULD ATTEMPT TO PERSUADE THE BRAZILIANS TO DELETE THE REFERENCE TO ARTICLE XXXVI:8 FROM THE DRAFT WAIVER. A REPORT ON THE RESULTS OF THIS DEMARCHE, INCLUDING AS DETAILED AN EXPLANATION OF THE BRAZILIANS' POSITION AND THE MOTIVATIONS BEHIND IT AS POSSIBLE IS NEEDED ASAP TO ALLOW THE USG TO FORMULATE ITS POSITION ON THE GATT COUNCIL VOTE ON THE WAIVER. EMBASSY SHOULD NOTE IN ITS PRESENTATION THAT, ON USG INSTRUCTIONS, U.S. DELEGATION TO OCTOBER 31 GATT COUNCIL MEETING OBTAINED POSTPONEMENT OF COUNCIL'S CONSIDERATION OF BRAZILIAN WAIVER ITEM UNTIL NOVEMBER 21 MEETING OF COUNCIL IN ORDER TO PROVIDE ADDITIONAL TIME TO REQUEST GOB TO RECONSIDER ITS POSITION.

AIDE-MEMOIRE

11. THE EMBASSY REFERS TO THE AIDE-MEMOIRE OF THE BRAZILIAN EMBASSY GIVEN TO THE DEPARTMENT OF STATE ON OCTOBER 23, 1975, WHICH EXPRESSED THE INTEREST OF THE BRAZILIAN GOVERNMENT IN THE SUPPORT OF THE GOVERNMENT OF THE UNITED STATES FOR THE GOVERNMENT OF BRAZIL'S APPLICATION FOR A WAIVER OF ITS OBLIGATION UNDER ARTICLE II OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE TO ALLOW IT TO

RENEGOTIATE CONCESSIONS BOUND IN THE GATT WHICH WERE
IMPAIRED BY DECREE 75.772.

12. THE UNITED STATES GOVERNMENT HAS GIVEN CAREFUL CON-
SIDERATION TO THE REQUEST OF THE GOVERNMENT OF BRAZIL
EXPRESSED IN THE ABOVE REFERENCED AIDE-MEMOIRE AND FINDS
NO OBJECTION TO A WAIVER PER SE. HOWEVER, THE U.S. GOVERN-
MENT REMAINS CONVINCED THAT THE WAIVER AS DRAFTED, WHICH
INCLUDES A REFERENCE TO ARTICLE XXXVI:8 OF THE GENERAL

AGREEMENT ON TARIFFS AND TRADE, IS NOT IN THE BEST LONG
RUN INTERESTS OF EITHER BRAZIL OR OF THE GENERAL AGREEMENT.

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13. THE CONCERN OF THE U.S. GOVERNMENT RISES OUT OF THE
POSSIBILITY THAT APPROVAL OF THE WAIVER AS REQUESTED BY
BRAZIL, COMPLETE WITH THE REFERENCE TO ARTICLE XXXVI:8,
WILL SET A PRECEDENT FOR DEVELOPING COUNTRY CONTRACTING
PARTIES FYI CONTRACTING PARTIES SHOULD BE TYPED IN LOWER
CASE LETTERS. END FYI. BEING ENTITLED TO MULTIPLE RE-
NEGOTIATIONS OF A PARTICULAR SET OF CONCESSIONS, EACH
TIME WITH LESS THAN FULL RECIPROCITY. FOLLOWED TO ITS
LOGICAL CONCLUSIONS, SUCH A PRACTICE WOULD RESULT IN THE
GRADUAL BUT COMPLETE ELIMINATION OF THOSE CONCESSIONS
WHICH THAT DEVELOPING COUNTRY CONTRACTING PARTY GRANTED
ITS DEVELOPED COUNTRY TRADING PARTNER IN THE INITIAL NE-
GOTIATION. EVEN IF NOT PURSUED TO SUCH A CONCLUSION,
THIS PRACTICE WOULD MAKE IT IMPOSSIBLE FOR A DEVELOPED
COUNTRY CONTRACTING PARTY TO ACCURATELY ASSESS THE VALUE
OF CONCESSIONS OFFERED BY A DEVELOPING COUNTRY CONTRACTING
PARTY IN A TRADE NEGOTIATION BECAUSE OF THE POSSIBLE
DIMINUATION OF THOSE CONCESSIONS BY SUBSEQUENT RENEGO-
TIATIONS. IF SUCH A SITUATION WERE TO DEVELOP, DEVELOPED
COUNTRY CONTRACTING PARTIES WOULD BECOME INCREASINGLY
RELUCTANT TO NEGOTIATE WITH DEVELOPING COUNTRY CONTRACTING
PARTIES WITH THE RESULT THAT PART IV OF THE GATT, AND
INDEED THE ENTIRE GENERAL AGREEMENT, COULD BE SERIOUSLY
THREATENED.

14. THE GOVERNMENT OF BRAZIL HAS TAKEN THE POSITION THAT
THE RENEGOTIATION IN QUESTION COULD BE CONSIDERED AN
EXTENSION OF THE RENEGOTIATIONS CONDUCTED UNDER THE WAI-
VER GRANTED BRAZIL BY THE CONTRACTING PARTIES FYI CON-
TRACTING PARTIES SHOULD BE TYPED IN ALL UPPER CASE LETTERS.
END FYI. IN 1967 AND THAT THEY DO NOT SET A PRECEDENT
FOR MULTIPLE RENEGOTIATIONS WITH REPEATED REFERENCE TO
ARTICLE XXXVI:8. THE GOVERNMENT OF THE UNITED STATES
FINDS IT DIFFICULT TO ACCEPT SUCH AN INTERPRETATION OF
THE SITUATION BECAUSE IT DOES NOT APPEAR TO BE SUPPORTED
BY THE FACTS AND, THEREFORE, COULD BE SUCCESSFULLY CONTEST-

ED BY ANOTHER CONTRACTING PARTY AT SOME FUTURE DATE. THE AGREEMENTS NEGOTIATED UNDER THE 1967 WAIVER HAVE ALL BEEN CONCLUDED, ALBEIT NOT FULLY IMPLEMENTED, AND THE WAIVER ITSELF HAS EXPIRED. FURTHER, THE TERMS OF THE 1967 WAIVER NO LONGER CLEARLY APPLY TO BRAZIL, E.G., BRAZIL LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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IS NOT SEEKING A WAIVER TO ENABLE IT TO CONVERT TO A NEW TARIFF SYSTEM. IN ANY CASE, THE UNITED STATES GOVERNMENT IS CONCERNED THAT A PRECEDENT WILL BE SET BY THIS DECISION WHETHER BRAZIL AND THE UNITED STATES DESIRE IT OR NOT.

15. THE POSITION OF THE UNITED STATES GOVERNMENT ON THIS ISSUE IS NOT MOTIVATED BY ANY DESIRE TO SINGLE OUT BRAZIL PER SE NOR BY THE VALUE OF THE SPECIFIC TRADE CONCESSIONS INVOLVED IN THIS CASE. IN FACT THE UNITED STATES FULLY SUPPORTS THE PRINCIPLE OF NOT EXPECTING TRADE CONCESSIONS OF ITS DEVELOPING COUNTRY TRADING PARTNERS WHICH ARE INCONSISTENT WITH THEIR LEGITIMATE TRADE, FINANCIAL, AND DEVELOPMENT NEEDS, ALTHOUGH THE UNITED STATES GOVERNMENT IS ALSO CONCERNED WITH MAINTAINING THE RELATIVE VALUE OF NEGOTIATED CONCESSIONS. THE DIFFICULTY WHICH THE UNITED STATES FINDS WITH THE BRAZILIAN PROPOSAL IS SIMPLY THAT A COUNTRY LESS RESPONSIBLE THAN BRAZIL IN THE CONDUCT OF ITS INTERNATIONAL TRADE POLICY MIGHT MAKE USE OF THIS POTENTIAL PRECEDENT IN A WAY WHICH WOULD SERIOUSLY WEAKEN THE GATT TO THE DETRIMENT OF DEVELOPED AND DEVELOPING COUNTRIES ALIKE.

16. IN VIEW OF THESE CONSIDERATIONS AND BRAZIL'S LARGE AND INCREASING STAKE IN THE VIABILITY OF THE GATT, THE UNITED STATES GOVERNMENT HOPES THAT THE GOVERNMENT OF BRAZIL WILL RECONSIDER ITS DECISION TO REQUEST THAT A REFERENCE TO ARTICLE XXXVI:8 BE INCLUDED IN THE WAIVER IT HAS REQUESTED OF THE CONTRACTING PARTIES. FYI CONTRACTING PARTIES SHOULD BE TYPED IN ALL UPPER CASE LETTERS. END FYI. IF THE GOVERNMENT OF BRAZIL AGREES TO DELETE THE REFERENCE TO ARTICLE XXXVI:8 FROM THE WAIVER, THE UNITED STATES GOVERNMENT WOULD BE PLEASED TO SUPPORT ITS APPROVAL IN THE GATT COUNCIL. KISSINGER UNQTE KISSINGER

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